

Chapter 9: Two-Year Misdemeanors in the Michigan Penal Code

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This chapter contains an overview of two-year misdemeanor traffic offenses found in the Michigan Penal Code. The discussion of each offense contains the following elements where relevant:

- The name of the offense.
- The text of the statute creating the offense.
- A summary of the elements of the offense.
- Criminal penalties.
- Licensing sanctions.
- Issues of importance to deciding cases involving the offense.

On attempted offenses, see Section 7.1 of this volume.

9.1 Negligent Homicide with a Motor Vehicle

A. Statute

MCL 750.324 states:

“Any person who, by the operation of any vehicle upon any highway or upon any other property, public or private, at an immoderate rate of speed or in a careless, reckless or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than \$2,000.00, or by both such fine and imprisonment.”

B. Elements of the Offense

CJ12d 16.14 states the elements of this offense as follows:

1. The defendant was operating a motor vehicle on or about [date], at [place].

2. The defendant was operating the vehicle [at an unreasonable speed / in a negligent manner].

3. The defendant's negligence was a substantial cause of an accident resulting in injuries to [name deceased].

4. Those injuries caused the death of [name deceased].

CJI2d 16.19 (Unreasonable Rate of Speed) and/or CJI2d 16.17 (Degrees of Negligence) may be given.

C. Criminal Penalties

MCL 750.324 provides the following penalties:

- imprisonment for not more than two years; or
- fine of not more than \$2,000.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a) and MCL 257.732(4)(c).

2. License revocation is mandatory upon one conviction of negligent homicide. MCL 257.303(5)(e).

3. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for negligent homicide with a motor vehicle and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of negligent homicide with a motor vehicle, the Secretary of State shall assess a \$1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

MCL 750.325 does not entitle a defendant charged with second-degree murder to a jury instruction on negligent homicide. *People v Weeder*, 469 Mich 493, 498 (2004). MCL 750.325 states that negligent homicide is a lesser-included offense of manslaughter and that "where a defendant is charged with manslaughter committed in the operation of any vehicle," a jury may convict the defendant of negligent homicide.

In *Weeder*, the defendant was charged with second-degree murder following an auto-related death. The trial court refused to instruct the jury on negligent homicide and the jury convicted the defendant of involuntary manslaughter. *Weeder*, *supra* at 495-96. The Michigan Supreme Court disagreed with the defendant's assertion that MCL 750.325 required that the jury be permitted to consider convicting him of negligent homicide where he was charged with second-degree murder but convicted of involuntary manslaughter. *Weeder*, *supra* at 498.

The Supreme Court emphasized that the plain and unambiguous language of MCL 750.325 clearly indicates that the statute applies only when a defendant is charged with manslaughter. *Weeder*, *supra* at 497-98. Because the defendant in *Weeder* was not charged with manslaughter, MCL 750.325 did not apply, and the defendant was not entitled to an instruction on negligent homicide on that basis. *Weeder*, *supra* at 498. When MCL 750.325 does not apply, a defendant's request for an instruction on negligent homicide may still be appropriate if negligent homicide is a necessarily included lesser offense of the charged offense, and where the evidence supports the instruction. *Weeder*, *supra* at 498-99, citing *People v Cornell*, 466 Mich 335 (2002).

"The commonly-accepted definition of 'immoderate' is: 'not within reasonable limits.' If one drives at a rate of speed that is not reasonable, he is driving at an immoderate rate of speed and not within reasonable limits. If under those circumstances he kills a person, he is guilty of negligence. The term 'immoderate speed' constitutes a form of negligence, and may result in damage to person or property. If it causes death, it is negligent homicide." *People v McMurchy*, 249 Mich 147, 155 (1930).

Whether the defendant was driving at an immoderate rate of speed does not depend upon the rate of speed fixed by law for operating such vehicle. MCL 750.326 and *People v Florida*, 61 Mich App 653, 662 (1975).

Michigan's negligent homicide statute allows criminal liability to be premised on an act of ordinary negligence, permitting criminal sanctions without finding criminal intent. *People v Olson*, 181 Mich App 348, 350 (1989).

Evidence of a violation of a penal statute creates a rebuttable presumption of negligence; the jury may infer negligence on the basis of the violation. The use of a statutory violation to establish negligence is a matter of judicial discretion. A statutory violation should only be used if:

- The statute is intended to protect against the result of the violation;
- The plaintiff is within the class intended to be protected by the statute; and
- The evidence will support a finding that the violation was a proximate contributing cause of the occurrence.

Klanseck v Anderson, 426 Mich 78, 86 (1986), and *Zeni v Anderson*, 397 Mich 117, 138 (1976).

A decedent's contributory negligence is not a defense to a negligent homicide charge, but the jury may consider the decedent's or a third person's conduct in deciding whether the defendant was negligent and whether the defendant's negligence was a proximate cause of the death. *People v Burt*, 173 Mich App 332, 333 (1988), *People v Richardson*, 170 Mich App 470, 472 (1988), and *People v Clark*, 171 Mich App 656, 659-61 (1988) (evidence of the decedent's failure to wear a seat belt was inadmissible to prove contributory negligence).

An example of using evidence of decedent's contributory negligence for the allowable purpose of determining whether defendant's negligence was a proximate cause of the death occurs in the case of *People v Moore*, 246 Mich App 172 (2001).

In *Moore*, the defendant's tractor-trailer was stopped in the middle of making a right turn because cars ahead were stopped at a red light. The defendant's truck was in the right lane and partly in the right center lane of the eastbound road and an eyewitness said that the truck was either stopped or moving very slowly. The decedent, traveling in the right center lane at about twenty-five miles an hour, struck the front of defendant's truck and lost control of his vehicle, which crossed several lanes of traffic into the westbound lanes where it hit a van head on, killing the decedent. *Moore, supra* at 173.

The district court excluded as irrelevant the evidence of the decedent's failure to use his seat belt. The defendant could not present two expert witnesses who would have testified that the decedent would not have died if he had been wearing his seat belt, and one would have testified that the decedent would not have lost control of his vehicle if he had been wearing his seat belt, claiming that the loss of control occurred because the decedent, thrown in his vehicle by the force of the initial impact, struck his head on the window. *Moore, supra* at 174, 178.

The Court of Appeals distinguished *Moore* from the *Burt-Clark-Richardson* line of cases, saying "this case is not about whether the decedent's failure to use the seat belt caused the accident, but is about whether defendant's alleged negligence caused the decedent's death." *Moore, supra* at 177 (citation omitted). The Court found that the decedent's failure to wear a seat belt and the testimony of the defendant's expert witnesses on the cause of the decedent's loss of control of his vehicle were "clearly relevant to the question whether the defendant's negligence caused the decedent's death." *Moore, supra* at 178.

9.2 Reckless Driving Causing Miscarriage, Stillbirth, or Death

A. Statute

MCL 750.90e states:

“If a person operates a motor vehicle in a careless or reckless manner, but not willfully or wantonly, that is the proximate cause of an accident involving a pregnant individual and the accident results in a miscarriage or stillbirth by that individual or death to the embryo or fetus, the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.”

B. Elements of the Offense

The elements of this offense are:

1. The defendant operated a motor vehicle in a careless or reckless manner.
2. The defendant’s conduct was a proximate cause of an accident.
3. The accident involved a pregnant woman.
4. The accident resulted in miscarriage, stillbirth, or death to an embryo or fetus.

C. Criminal Penalties

MCL 750.90e provides the following penalties:

- imprisonment for not more than two years; or
- fine of not more than \$2,000.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a) and MCL 257.732(9).
2. Suspension of the defendant’s license is mandatory for a period of one year. MCL 257.319(2)(d).
3. Revocation of defendant’s license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within

seven years for any felony in which a motor vehicle was used and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of reckless driving causing miscarriage, stillbirth, or death, the Secretary of State shall assess a \$1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

See *People v Selwa*, 214 Mich App 451, 456-57 (1995), in which the Court of Appeals held that the evidence was sufficient to bind a defendant over for trial on a charge of negligent homicide. The defendant caused an automobile accident involving a pregnant woman, who delivered a six-and-one-half month old baby by emergency cesarean section following the accident, the baby died two-and-one-half hours after delivery, and a certificate of live birth and a death certificate were both issued.

9.3 Unlawful Use of an Automobile, Without Intent to Steal

A. Statute

MCL 750.414 states:

“Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$1,500.00. However, in case of a first offense, the court may reduce the punishment to imprisonment for not more than 3 months or a fine of not more than \$500.00. However, this section does not apply to any person or persons employed by the owner of said motor vehicle or any one else, who, by the nature of his or her employment, has the charge of or the authority to drive said motor vehicle if said motor vehicle is driven or used without the owner’s knowledge or consent.”

B. Elements of the Offense

CJI2d 24.2 lists the following elements for this offense:

1. The vehicle belonged to someone else.
2. The defendant used the vehicle.

3. The defendant did this without authority.
4. The defendant intended to use the vehicle, knowing that [he / she] did not have authority to do so.

CJI2d 24.2(6) further states that anyone who assists in using a vehicle is also guilty of this crime if he or she gave the assistance knowing that the person who was taking or using the vehicle did not have the authority to do so.

C. Criminal Penalties

MCL 750.414 provides for criminal penalties as follows:

- imprisonment for not more than two years; or
- fine of not more than \$1,500.00.

Note: The statute does not say “or both.”

For a first offense, the court has discretion to reduce the punishment to:

- imprisonment for not more than three months; or
- fine of not more than \$500.00.

Note: The statute does not say “or both.”

D. Licensing Sanctions

1. Two points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(s) and MCL 257.732(4)(a). The Secretary of State has interpreted “[a]ll other moving violations” in Vehicle Code §320a(1)(s) to include this offense.

2. If the defendant has no prior convictions for this offense within the preceding seven years, the Secretary of State must suspend the defendant’s driver’s license for 90 days. If the defendant has one or more prior convictions for the offense within seven years, the Secretary of State must suspend the defendant’s driver’s license for one year. MCL 257.319(6).

3. Upon posting of an abstract that an individual has been found guilty of unlawful use of an automobile, the Secretary of State shall assess a \$1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

To be convicted of unlawful use of an automobile, the defendant must have intended to use the vehicle, knowing that he or she had no authority to do so; no intent is required beyond the intent to do the physical act itself. This offense is a general intent crime. Voluntary intoxication is not available as a defense. *People v Laur*, 128 Mich App 453, 455 (1983).

The phrase “without authority” has been interpreted by the courts to mean “beyond the authority” or “in excess of [the] authority” granted to the person using the automobile. *People v Hayward*, 127 Mich App 50, 61 (1983), and *Landon v Titan Ins Co*, 251 Mich App 633, 643 (2002).

Unlawful use of an automobile under §414 is a necessarily lesser-included offense of unlawfully driving away an automobile under §413. *People v Crosby*, 82 Mich App 1, 3 (1978).

“Joyriding” is a term sometimes used to describe this offense. *Priesman v Meridian Mut Ins Co*, 441 Mich 60, 70 (1992) (Griffin, J, dissenting). However, the primary use of “joyriding” is to describe the felony offense. See *People v Lerma*, 66 Mich App 566, 570 (1976), and *People v Hayward*, *supra* at 63, referring to the felony provisions of MCL 750.413 as “the ‘joyriding’ statute” and “a felony commonly known as ‘joyriding.’”

Unlawful driving away an automobile is a related felony under MCL 750.413.* The Court of Appeals has distinguished unlawful driving away an automobile from unlawful use of an automobile without intent to steal as follows:

“The distinction between the two offenses is that [the felony offense] requires the defendant to take possession of the motor vehicle without the owner’s permission, while the misdemeanor offense of unlawful use of a motor vehicle is committed when an individual, who has been given lawful possession of a motor vehicle, uses it beyond the authority which has been granted to him by the owner.” *Hayward*, *supra* at 61 (1983). See also CJI2d 24.4.

Note: Although the *Hayward* court lists lawful possession as one of the elements of unlawful use of an automobile, that element is not found in the statute, and the *Crosby* court specifically notes that “[l]awful possession is not an element of the offense of unlawful use of an automobile.” *Crosby*, *supra* at 4.

*See Section 8.3 of this volume for more information on unlawful driving away an automobile.